

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 02-31224-DHW
Chapter 13

ERWIN DONALD TAYLOR
SHEILA M. TAYLOR,

Debtors.

MEMORANDUM OPINION

On October 29, 2002, the chapter 13 trustee filed an objection to the secured claim of R&S Motor Company (hereinafter, R & S). On January 10, 2003, R & S filed a response opposing the trustee's objection to its secured claim. Following the filing of briefs by both parties and a hearing on May 13, 2003, the court took the matter under submission. For the following reasons the court finds that the trustee's objection to the secured claim of R & S must be sustained and that the claim be allowed as a general unsecured one.

The court's jurisdiction in this matter derives from 28 U.S.C. § 1334. Because an objection to a claim against the estate is a core proceeding under 28 U.S.C. § 157, the court may enter a final order or judgment.

FINDINGS OF FACT

The relevant facts are not in dispute.¹ Edwin D. Taylor purchased a 1986 GMC truck from R & S on November 5, 2001. As part of the purchase price Taylor gave R & S a note and a security interest in the vehicle.

On November 24, 2001, R & S delivered to the Alabama Department of Revenue a title application covering the 1986 GMC. Thereafter, on December 7, 2001, the Alabama Department of Revenue returned the application to R & S due to

¹See Joint Statement of Facts for Submission on Trustee's Objection to Secured Status of Claim of R & S Motor Company (Docket Entry # 37).

incompleteness² advising R & S to return a completed application within 10 days.

On February 14, 2002, R & S again delivered the title application to the Alabama Department of Revenue. On February 22, 2002, the Alabama Department of Revenue issued a certificate of title for the 1986 GMC which showed R & S as the lien creditor.

Taylor filed the instant chapter 13 petition for relief on April 18, 2002.

CONCLUSIONS OF LAW

The trustee contends that R & S perfected its security interest in the vehicle on February 14, 2002 when it delivered the completed title application to the Alabama Department of Revenue. Because perfection occurred within 90 days of Taylor's filing for bankruptcy relief, the trustee contends that the security interest may be avoided under 11 U.S.C. § 547 leaving R & S's claim as unsecured.³

²The deficiency in the application involved the omission of a record of ownership of this particular vehicle. The original title to this vehicle was issued by another state, and R & S's title application did not include the necessary documentation establishing the complete chain of title for this vehicle.

³Subsections (b) and (f) of § 547 provide:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made—
 - (A) on or within 90 days before the date of the filing of the petition; or
 - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

R & S on the other hand contends that its security interest in Taylor's vehicle was perfected on November 24, 2001, when it first delivered a title application to the Alabama Department of Revenue. A November 24, 2001 perfection date places the transfer outside of 90 days before bankruptcy and hence, insulates the transfer from avoidance under § 547.

Therefore, the issue presented here is whether the delivery of an incomplete title application to the Alabama Department of Revenue is sufficient to perfect a security interest in a motor vehicle. Neither the parties nor this court could locate a decision of the Alabama Supreme Court, or any Alabama state court for that matter, which directly addresses this issue. Consequently, in cases presenting novel questions of state law it is this court's task to predict the holding of the state's highest court were it presented with this issue. *Ernie Haire Ford, Inc. v. Ford Motor Co.*, 260 F.3d 1285, 1290 (11th Cir. 2001); *Freeman v. First Union National*, 329 F.3d 1231 (11th Cir. 2003); *Arceneaux v. Texaco, Inc.*, 623 F.2d 924, 926 (5th Cir. 1980).

The parties agree that Alabama's *Uniform Certificate of Title and Antitheft Act* controls. See *Ala. Code* § 32-8-1(1975) *et seq.* There, at § 32-8-61(b), the exclusive means of perfection of a security interest in a vehicle is established. In order to perfect a security interest three things must occur. First, if an existing certificate of title exists, it must be delivered to the Department of Revenue. Second, an application for a certificate of title must be delivered to the department, and third, the required fee must be tendered to the department.⁴

Further, the Alabama statute creates specific content requirements for title certificate applications. See § 32-8-35. Because the vehicle at issue here was last registered in another state, subsection (f) of § 32-8-35 governs. That subsection provides:

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition

⁴§ 32-8-61 provides:

(b) A security interest is perfected by the delivery to the department of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the lienholder and the date of his security agreement and the required fee.....

(f) If the application refers to a vehicle last previously registered in another state or country, the application shall contain or be accompanied by:

- (1) Any certificate of title issued by the other state or country;
- (2) Such other information and documents as the department may reasonably require to establish ownership of the vehicle and the existence or non existence of security interest in it; and
- (3) The certificate of a designated agent that the vehicle has been physically inspected by him, that the vehicle identification number and descriptive data shown on the application pursuant to subsection(a)(2) of this section are correct and such other proof of the identity of the vehicle as the department may reasonably require. (Emphasis added)

Courts in other jurisdictions with substantially identical statutes have held that perfection of a security interest did not occur when the underlying application was defective. In *In re Frady*, 276 B.R. 456 (Bankr. N.D. Ms. 2000) the bankruptcy court held that where a title application was incomplete it would be rejected and returned by the State. Hence, the purported delivery of the application would be invalid. In *In re Russell*, 227 B.R. 196 (Bankr. M.D. Ga. 1998) the court interpreting statutes virtually identical to Alabama's held that "the corrected and supplemental application does not relate back to the delivery of the original application" Indeed, this court in an unpublished decision of Judge William R. Sawyer has held that delivery to the Alabama Department of Revenue did not occur until the complete title application was delivered. *In re Tony T. Roberts*, Case No. 01-7375-WRS (Bankr. M.D.Ala. October 10, 2002).

The court concurs with these decisions. In order to constitute an application for a title certificate R & S was required under § 32-8-35(f) to include information and documents to establish ownership of the vehicle and the existence of any security interest in the vehicle. This it failed to do. It follows that the materials delivered to the Alabama Department of Revenue on November 24, 2001 did not constitute an application for title, therefore perfection of the security interest, under § 32-8-6, did not occur. Rather, R & S perfected its security interest on February 22, 2002 when it finally delivered the required documentation to satisfy § 32-8-35(f). Unfortunately for R & S, the February 2002 perfection date is avoidable by the trustee pursuant 11 U.S.C. §§ 544 and 547.

For these reasons a separate order will enter sustaining the trustee's objection to the secured status of R & S's claim and allowing the claim as unsecured.

Done this 30 day of June, 2003.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Vonda S. McLeod, Attorney for Debtors
Paul L. Beckman, Jr., Attorney for Creditor
Curtis C. Reding, Trustee